

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

Claims 1-17 are pending in this application. Claims 1 and 14 are the only independent claims.

The Official Action rejects independent Claims 1 and 14 under 35 U.S.C. §103(a) over U.S. Patent No. 5,915,574 to Adams et al. ("Adams"), in view of U.S. Patent No. 5,108,003 to Granofsky. The rejection is respectfully traversed.

Independent Claim 1 is directed to a sealed package for pourable food products. The package includes, *inter alia*, at least one removable portion, a pull-off opening means comprising a rigid plate integral with the removable portion, and a pull-tab of sheet material interposed between the removable portion and the plate and attached to both.

Independent Claim 14 is directed to a sealed package for pourable food products. The package includes, *inter alia*, at least one removable portion, a pull-off opening means comprising a rigid plate attached to the removable portion, and a pull-tab of sheet material interposed between the removable portion and the plate and attached to both.

The combination of Adams and Granofsky fails to disclose, and would not have rendered obvious, the combination of features recited in independent Claims 1 and 14, including a rigid plate integral with or attached to the removable portion, and a pull-tab of sheet material interposed between the removable portion and the plate and attached to both.

Adams discloses a sealed package having a fitment 16 secured to a carton panel 11 and providing a hole 12 as an opening to the carton panel 11, and a cap 46 fitted to the fitment 16 (see Fig. 1 of Adams). In addition, Adams discloses a pull ring 39 attached to a membrane 32 (see Fig. 1). The Official Action believes that the pull ring 39 corresponds to the claimed pull-off opening means, and that the membrane 32 corresponds to the claimed rigid plate.

The Official Action acknowledges that Adams fails to disclose that the membrane 32 is integral with or attached to a removable portion, and does not disclose a pull-tab of sheet material interposed between the removable portion and the membrane 32, wherein the pull-tab of sheet material is attached to both the removable portion and the membrane 32. To address these deficiencies, the Official Action relies upon the disclosure in Granofsky.

Granofsky discloses a cover for a beverage can that includes a pull tab 26 extending radially across the top of the can and having a plug 27 secured to the underside of the pull tab 26 (see Fig. 4 and col. 2, lines 40-48 of Granofsky). The Official Action states that the pull tab 26 corresponds to the claimed pull-tab, and that the plug 27 corresponds to the claimed removable portion. Further, the Official Action takes the position that it would have been obvious to modify the package disclosed by Adams to have Granofsky's pull tab 26 and plug 27 "to provide a sanitary cover for the opening" (see paragraph "8" on page four of the Official Action). Applicants respectfully disagree.

First, Granofsky's tab 26 and plug 27 do not constitute a pull-tab of sheet material and a removable portion respectively in the same manner claimed here. For example, the tab 26 in Granofsky is not positioned between the plug 27 and a

plate of a pull-off opening means. It seems that the tab 26 is akin to Adams' pull ring 39, while the plug 27 is similar to the membrane 32 disclosed by Adams. That is, the combination of Granofsky's tab 26 and plug 27 seems more properly characterized as an alternative to the ring 39 and membrane 32 configuration in Adams, not an addition to the ring 39 and membrane 32. In other words, Granofsky does not suggest adding the tab 26 and the plug 27 to the arrangement disclosed by Adams.

In addition, one skilled in the art would not have modified Adams' package to have Granofsky's pull tab 26 and plug 27. Adams discloses that the membrane 32 is concave so that if the container on which the spout is attached is compressed, the membrane 32 serves as a bellows to absorb such compression without danger of the membrane 32 being detached from the spout of the fitment 16 (see col. 1, lines 25-31 of Adams). On the other hand, Granofsky's plug 27 has a linear shape as best shown in Fig. 2 of Granofsky. The plug 27 is not concave, and is thus not able to act as a bellows to absorb compression without danger of being detached from the opening 16. Thus, modifying Adams' package to include Granofsky's plug 27 would render Adams' fitment 16 unsatisfactory for its intended purpose (MPEP §2143.01(V)), and would change the principle of operation of the fitment 16 (MPEP §2143.01(VI)). One skilled in the art would not have made such a modification of Adams' fitment 16. The Official Action fails to consider the references and claims as a whole and relies on impermissible hindsight using knowledge gleaned only from Applicants' disclosure (see MPEP §2145(X)(A)).

Further, there is inadequate evidence to support the Official Action's conclusion that it would have been obvious to one skilled in the art to modify Adams' package to have Granofsky's pull tab 26 and plug 27. The Official Action simply

states that the combination would have been obvious in order "to provide a sanitary cover for the opening". This conclusory statement is insufficient to support an obviousness rejection, particularly taking into account the Patent Office's Examination Guidelines for Determining Obviousness Under 35 U.S.C. §103(a) in view of *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007). The Guidelines state that the Examiner should clearly articulate why the claimed invention would have been obvious. For example, the Supreme Court in *KSR* held that the Examiner "must [provide] some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" (*KSR*, 82 USPQ2d 1385, 1396 (2007)).

In this case, Adams' fitment 16 already provides the package with a sanitary cover for the opening. Thus, it is not at all apparent why one skilled in the art would have been led to the stated modification. The Official Action here fails to explain, with articulated reasoning or rational underpinning, why or how it would have been obvious to provide Adams' package with Granofsky's pull tab 26 and plug 27. The Supreme Court in *KSR* noted that an invention "composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the art." (*Id.*) To establish obviousness, it must be shown that those of ordinary skill in the art would have had some "apparent reason to combine the known elements in the fashion claimed." (*Id.*) Simply because something could have been modified and a person of ordinary skill was capable of making the modification does not mean it would have been obvious to do so. Here, there is inadequate evidence supporting the conclusion that it would have been obvious to modify Adams' package with Granofsky's pull tab 26 and plug 27.

For at least the reasons discussed above, it would not have been obvious to modify Adams' package to have Granofsky's pull tab 26 and plug 27.

Even assuming Adams' package was modified as stated in the Official Action, the resulting combination would not be that which is recited in the claims here. In particular, Granofsky's pull tab 26 would not be attached to a rigid plate as recited in independent Claims 1 and 14. Granofsky discloses that one end of the pull tab 26 is attached to the underside of the cover 10, and that the other end becomes exposed to be grasped for pulling (see Figs. 3 and 4 and col. 2, lines 40-43). Thus, even if Adams was modified with Granofsky's pull tab 26 and plug 27, the pull tab 26 would not be positioned between the plug 27 and a rigid plate and *attached the rigid plate*. That is, the pull tab 26 would not be positioned between the plug 27 and a rigid plate and *attached to both* as recited in independent Claims 1 and 14. Similarly, Granofsky's plug 27 ("removable portion") would not be integral with a rigid plate as recited in independent Claim 1, and Granofsky's plug 27 ("removable portion") would not be attached to a rigid plate as recited in independent Claim 14.

Thus, the combination of Adams and Granofsky fails to disclose, and would not have rendered obvious, the combination of features recited in independent Claims 1 and 14, including a rigid plate integral with or attached to the removable portion, and a pull-tab of sheet material interposed between the removable portion and the plate and attached to both. Thus, independent Claims 1 and 14 are patentable over the combination of Adams and Granofsky for at least the reasons discussed above.

Claims 2-13 and 15-17 are patentable over the applied references at least by virtue of their respective dependence from patentable independent Claims 1 and 14.

Thus, a detailed discussion of the additional distinguishing features recited in these dependent claims is not set forth at this time. Withdrawal of the rejections is respectfully requested.

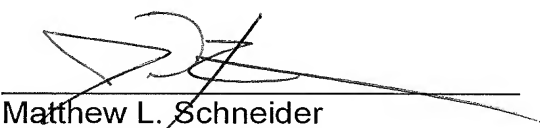
Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application the undersigned respectfully requests that he be contacted at the number indicated below.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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By:


Matthew L. Schneider
Registration No. 32814

David R. Kemeny
Registration No. 57241

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620